

8200 Greensboro Drive, Suite 820, McLean, VA 22102  
(703) 485-3535 (main) - (703) 485-3525 (fax)  
www.rothdonerjackson.com

**Mitchell N. Roth**  
(703) 485-3536 (direct)  
mroth@rothdonerjackson.com

December 5, 2013

**ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Petition for Declaratory Ruling filed by Club Texting, Inc.  
Petition for Expedited Declaratory Ruling filed by Glide Talk, Ltd.  
CG Docket No. 02-278.  
**Notice of Ex Parte Presentation**

Dear Ms. Dortch:

On Wednesday, December 4, 2013, the undersigned and Genevieve C. Schmitt of this law firm met with Maria Kirby, Legal Advisor to Chairman Tom Wheeler, to discuss pending issues Dialing Services has with the Enforcement Bureau.

During the meeting, we also discussed the Petition for Declaratory Ruling filed by Club Texting, Inc. ("Club Texting Petition") and the Petition for Expedited Declaratory Ruling filed by Glide Talk, Ltd. ("Glide Talk Petition"), both on CGB Docket No. 02-278 and pending before the Consumer and Government Bureau. During the meeting, we expressed support for the positions set forth in both petitions; namely, that operators of hosted messaging/broadcasting platforms should be shielded from liability for violations of the Telephone Consumer Protection Act ("TCPA") committed by their clients (i.e., those parties using the platform to transmit a message) and that the operators of the messaging/broadcasting platforms do not "initiate" calls.

We discussed the similarities between hosted messaging/broadcasting platforms and fax broadcasters, and we discussed the Commission's implementing regulations under the Junk Fax Prevention Act. We noted how the Commission specifically opted to shield fax broadcasters from liability for the actions of their clients provided they do not demonstrate a high degree of involvement in, or actual notice of, the unlawful activity and fail to take steps to prevent such violations. This is the protection that Club Texting seeks in its petition and Dialing Services supports this position.

Marlene H. Dortch, Secretary  
Federal Communications Commission  
December 5, 2013  
Page 2

Finally, we discussed broadcasters/platform providers' difficulties in complying with the requirements for prior express (sometimes written) consent when the broadcasters/platform providers have no relationship with the message recipients. Moreover, we discussed the illogical consequences that would follow if voice message broadcasters/platform providers are held liable for violations of the TCPA by their clients. Such liability could then extend to do-not-call violations, time of day restrictions, caller identification requirements, etc. Additionally, it will expose operators of hosted messaging/broadcasting platforms to the increasing amount of nationwide class action litigation arising out of the TCPA. We left behind the attached presentation.

Very truly yours,



Mitchell N. Roth

Enclosure

MNR/gcs

cc: Maria Kirby, Legal Advisor